UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JAMES JONES,

Plaintiff,

-against-

QUALITY FLOORSHINE CORP., a/k/a
Quality Facility Solutions and
YIDEL FALKOWITZ,

Defendants.

CIVIL ACTION NO.:

COMPLAINT

Plaintiff, JAMES JONES, by his attorneys BLAU LEONARD LAW GROUP, LLC alleges of his own knowledge and conduct and upon information and belief as to all other matters, as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this action pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 et. seq. ("FLSA") in connection with Defendants' violation of their statutory obligations to pay Plaintiff overtime wages, as a non-exempt employee, for work in excess of 40 hours per week, at a rate of 1.5 times his regular rate of pay, pursuant to 29 U.S.C. §207 (a).

2. Plaintiff also brings this action under New York's Wage and Hour Laws. ("NYLL") More specifically, Plaintiff asserts that he is entitled to (a) unpaid wages for all hours worked and (b) overtime wages for his work beyond 40 hours per week, at a rate of 1.5 times his regular rate of pay pursuant to N.Y. Labor Law § 663(1) and the supporting New York State Labor Regulations, 12 N.Y.C.R.R. Part 142.

3. Plaintiff also seeks to recover monetary damages arising from Defendants' violation of New York Labor Law §§ 191,193, 663 and the common law of New York, in failing to pay Plaintiff earned wages/ commissions, for business he had secured prior to his termination from employment.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action involves the Fair Labor Standards Act, 29 U.S.C. § 201et seq., a Federal Statute.

5. Jurisdiction exists in this Court based on complete diversity of citizenship between the parties and because the value of the rights of the Plaintiff implicated by the conduct alleged herein and the actual and potential loss to the Plaintiff as a result of Defendants' unlawful conduct exceed $75,000, exclusive of interest and costs, pursuant to 28 U.S.C. § 1332.

6. As to claims under New York State law, this Court has supplemental subject matter jurisdiction pursuant to 28 U.S.C. § 1367.

7. Venue is proper in this District under 28 U.S.C. § 1391 (b) and (c) because a substantial part of the acts or omissions giving rise to this action occurred in this District and Defendants are subject to personal jurisdiction in this District.

THE PARTIES

8. QUALITY FLOORSHINE CORP, a/k/a Quality Facility Solutions ("QFS") is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 67 Taaffe Place, Brooklyn, NY 11205.

9. YIDEL FALKOWITZ is the President of QFS.

10. Upon information and belief, YIDEL FALKOWITZ is an individual citizen and resident of Monroe, New York.

11. Plaintiff is an individual citizen and resident of Parsippany, New Jersey 07054.

FACTUAL ALLEGATIONS

12. QFS is engaged in the building maintenance services industry and provides a range of cleaning services, including emergency flood and fire clean-ups, post construction cleaning, concrete polishing and carpet cleaning.

13. QFS operates and controls an enterprise engaged in commerce, with an annual gross volume of business exceeding $500,000.00.

14. From 01/18/2016 to 04/03/17, QFS employed Plaintiff at its headquarters, as Director of Sales.

15. Plaintiff's primary job responsibilities as an inside sales account executive, was to liase with existing account holders to ensure customer satisfaction and to increase retention and account growth.

16. At all times material and relevant herein, QFS was the employer of Plaintiff and possessed the authority and power to hire or terminate Plaintiff; control Plaintiff's work schedules and conditions of employment; determined the rate and method of the payment of wages; determined Plaintiff was exempt; determined overtime policy; determined compensation day policies and kept and/or had unrestricted access to records regarding Plaintiff's employment.

17. At all relevant times, Plaintiff was an employee of QFS within the meaning of 29 U.S.C. §§201 et. seq.

18. At all relevant times, Plaintiff was an employee of QFS within the meaning of NYLL§§650 et. seq. and the supporting New York State Department of Labor regulations.

19. At all relevant times, in addition to possessing the powers and authority described in paragraph 16, YIDEL FALKOWITZ exercised operational control of QFC, presiding over the day-to-day activities of QFS's employees, including the Plaintiff.

20. At all relevant times, YIDEL FALKOWITZ acted directly or indirectly in the interest of QFS in relation to Plaintiff.

21. At all relevant times, YIDEL FALKOWITZ possessed overall operational control of QFS, possessed a controlling ownership interest in it; had authority over all personnel decisions; had authority over payroll decisions; had authority to hire and fire employees; controlled significant functions of the business, determined Plaintiff's salary and day-to-day activities.

22. At all relevant times, YIDEL FALKOWITZ was a joint employer of Plaintiff pursuant to 29 CFR 791.2.

23. At all relevant times, YIDEL FALKOWITZ was a joint employer of Plaintiff pursuant to the provisions of the NYLL and *Zheng v. Liberty Apparel Co.*, 2002 WL 398663, at *6 n. 3 (S.D.N.Y. 2002). (Defendants will hereinafter be collectively referred to as "QFS")

24. During his employment with QFS, Plaintiff was required to work six (6) days per week.

25. Plaintiff was required by QFS and did regularly work at least 55 hours per week.

26. At all relevant times, Plaintiff worked in the manner described above and QFC encouraged, instructed, and required him to work in this manner.

27. Plaintiff was never paid overtime compensation by QFS, for any hours worked each week, in excess of 40 hours.

28. For example, during the work week of 03/26/17 to 04/03/17, Plaintiff worked 55 hours and was paid approximately $ 1,827.30 (Salary & Commission Draw). Plaintiff's regular rate of pay for that workweek was $1,827.30 ÷ 55 = $33.22hr. His overtime rate was 1.5 times his regular rate of pay [33.22 x 1.5 = $49.83]. Plaintiff should have been paid overtime compensation of 15hrs. x $49.83 =$ 747.53. Instead he received ZERO overtime compensation.

29. Upon information and belief, QFS never posted a notice explaining the minimum hourly wage and overtime pay rights provided by FLSA in any area of its business facility where Plaintiff was employed, in violation of 29 C.F.R. §516.4.

30. At all times material and relevant herein, QFS failed to keep full and accurate records of Plaintiff's hours and wages, in violation of 29 C.F.R. §§ 516.5.

31. QFS intentionally and knowingly treated Plaintiff as exempt under § 213(a) of the FLSA, to circumvent the statute's overtime pay requirements.

31. QFS intentionally and knowingly treated Plaintiff as exempt under

NYLL, to circumvent the statute's overtime pay requirements.

32. QFS intentionally and knowingly misclassified Plaintiff, as an employee exempt from the overtime pay requirements of the FLSA, despite his regular performance of non-exempt duties.

33. QFS intentionally and knowingly misclassified Plaintiff, as an employee exempt from the overtime pay requirements of the NYLL, despite his regular performance of non-exempt duties.

34. Plaintiff did not and does not qualify as an exempt employee as defined by the applicable Federal statutes and regulations.

35. Plaintiff did not and does not qualify as an exempt employee as defined by the applicable provisions of NYLL and supporting regulations.

36. QFS's wrongful acts, omissions and/or commissions, as alleged herein, were not made in good faith or in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation by the U.S. Department of Labor and/or the New York Department of Labor, or any administrative practice or enforcement policy of such departments.

37. QFS's widespread violations of the above-described federal and state wage and hour statutes and regulations were willful, arbitrary, unreasonable and/or in bad faith.

FIRST CLAIM FOR RELIEF (FLSA)

38. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

39. QFS failed to compensate Plaintiff for all hours in a work week in excess of forty (40).

40. QFS failed to compensate Plaintiff at a rate of 1.5 times his regular rate of pay, for all hours in a work week in excess of 40.

41. QFS's overtime practices, as described herein, violated the FLSA.

42. QFS's conduct and employment practices, as described herein, was/is willful, intentional, unreasonable, arbitrary and in bad faith.

43. By reason of these unlawful acts, QFS has deprived Plaintiff of overtime compensation, in amounts to be determined at trial, together with such other amounts for liquidated damages, prejudgment interest, attorney's fees, costs and other compensation pursuant to 29 U.S.C. § 216(b).

SECOND CLAIM FOR RELIEF (NYLL)

44. Plaintiff repeats and realleges the preceding paragraphs of the Complaint as if fully set forth herein at length.

45. QFS failed to compensate Plaintiff for all hours in a work week in excess of forty (40).

46. QFS failed to compensate Plaintiff at a rate of 1.5 times his regular rate of pay, for all hours in a work week in excess of 40.

47. QFS's overtime practices, as described herein, violated NYLL, Article 19, §§650 et. seq.

48. QFS's conduct and employment practices, as described herein, was/is willful, intentional, unreasonable, arbitrary and in bad faith.

49. By reason of these unlawful acts, QFS has deprived Plaintiff of overtime compensation in such amounts as to be determined at trial, together with liquidated damages, prejudgment interest, attorney's fees, costs and other compensation pursuant to NYLL§§650 et. seq. and the supporting New York State Department of Labor regulations.

THIRD CLAIM FOR RELIEF
(New York Labor Law §§ 191,193)

50. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

51. As an inside sales account executive, Plaintiff's principal activity was not supervisory, managerial, executive or administrative in nature.

52. The terms and conditions of Plaintiff's employment, including payment of commissions, is set forth in an Agreement dated January 18, 2016, signed by both QFS and the Plaintiff.

53. Pursuant to the Agreement, Plaintiff received an annual salary of seventy-five thousand dollars ($75,000) payable according to the then current payment schedule generally used by Company for its employees.

54. Pursuant to the Agreement, Plaintiff was entitled to receive 3% of revenue on one one-time contracts, and 1.5% of revenue for ongoing contracts, applicable to leads he generates on his own. In both cases, the commission earned on revenue generated will expire 12 months after signing of the contract.

55. For leads specifically given to the Plaintiff by QFS, he was entitled to receive 2% of net profit on one one-time contracts, and 1% of net profit for ongoing

contracts. In both cases, the commission earned on revenue generated will expire 12 months after signing of the contract.

56. QFS violated New York Labor Law §§ 191 by failing to create a writing, signed by both the employer and the commission salesperson, setting forth a description of how wages, salary, commissions and all other monies earned and payable shall be calculated.

57. QFS violated New York Labor Law §§ 191 by failing to create a writing, signed by both the employer and the commission salesperson, setting forth details pertinent to payment of wages, commissions and all other monies earned and payable in the case of termination of employment by either party.

58. QFS terminated Plaintiff's employment on April 1, 2017.

59. Plaintiff has requested that QFS furnish a statement of earnings paid or due and unpaid as of the date of termination.

60. To date, QFS refuses to furnish this requested information.

61. As of the time of termination, Plaintiff had earned and was entitled to payment of commissions in the approximate amount of Twenty-Six Thousand ($26,000.00) Dollars.

62. Plaintiff has duly demanded payment of earned commissions, as of the time of termination, in the approximate amount of $26,000.00 and QFS has refused to compensate Plaintiff, in whole or in part, for such wages.

63. QFS is liable to Plaintiff for all unpaid wages/earned commissions in such amounts to be determined at trial, together with the costs of this action, including reasonable attorney's fees.

FOURTH CLAIM FOR RELIEF
(New York Labor Law § 663)

64. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

65. Once a commission is earned, it is legally considered "wages" under the New York Labor Law and subject to all other provisions of the Labor Law regarding payment of wages.

66. Once earned, commissions are considered wages and deductions are limited to those permitted by Section 193 of the New York Labor Law.

67. As a result of QFS's unlawful business practices, as above described, Plaintiff received wages from QFS in an amount less than the wages that he earned.

68. Pursuant to New York Labor Law§ 663, Plaintiff is entitled to recover the amount of any such underpayments, interest and costs, including reasonable attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and damages as follows:

(a) Judgment for unpaid overtime pay to which Plaintiff is lawfully entitled pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, et. seq., and attendant regulations at 29 C.F.R. § 516 et. seq.;

(b) Judgment for liquidated damages pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, et. seq., and attendant regulations at 29 C.F.R. §516 et. seq., in an amount equal to the unpaid overtime pay to which Plaintiff is entitled;

(c) Judgment for unpaid overtime pay to which Plaintiff is lawfully entitled pursuant N.Y. Labor Law § 650 et. seq. and attendant regulations at N.Y.C.R.R. § 142-3.1 et. seq. and New York State common law principles;

(d) Judgment for liquidated damages pursuant to N.Y.L.L. Article §§ 190 et. seq., Article 19, §§ 650 et. seq. and 12 N.Y.C.R.R Part 137, to which Plaintiff is entitled.

(e) Judgment for all unpaid earned commissions as of the date of termination, pursuant to New York Labor Law §§ 191,193 and New York common law principles.

(f) Judgment for all unpaid earned wages as of the date of termination, pursuant to New York Labor Law § 663;

(g) An order directing QFS to pay Plaintiff his reasonable attorney's fees and all costs connected with this action.

(h) Such other and further relief as this Court may deem just and proper.

Dated: April 21, 2017

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